

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARRYL ROBERTS and ADRIENNE
ROBERTS,

Plaintiffs,

V.

NATIONAL BEVERAGE CORPORATION,
et al.,

Defendants.

CASE NO. C19-194RSM

**ORDER GRANTING STIPULATED
MOTION TO DISMISS FMLA CLAIMS
AND REMAND TO STATE COURT**

Defendants.

Claims and Remand to State Court. Dkt. #7. Defendants removed this action from state court on the basis that Plaintiffs' Complaint asserted claims under the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 1441(a). Dkt. #1 at 2. The parties now stipulate¹ to the dismissal of

¹ The Court notes that the parties may not merely agree to “dismiss” the FMLA claims. Federal Rule of Civil Procedure 41 does not allow a plaintiff to dismiss “a single claim from a multi-claim complaint.” *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1392 (9th Cir. 1988). Rather, “Federal Rule of Civil Procedure 15(a) is the appropriate mechanism ‘[w]here a plaintiff desires to eliminate an issue, or one or more but less than all of several claims, but without dismissing as to any of the defendants.’” *Id.* (citation omitted); *Hells Canyon Preservation Council v. U.S. Forest Service*, 403 F.3d 683, 687–688 (9th Cir. 2005) (no distinction between Rule 41(a)(1) and Rule 41(a)(2)). Plaintiff should likely file an amended complaint in state court.

1 Plaintiffs' FMLA claims.² Despite slight procedural errors, as noted, the parties clearly intend
2 that Plaintiff will not pursue FMLA claims and that the action should proceed in state court. The
3 Court is not presented with a compelling reason that weighs against granting the relief requested.

4 Accordingly, and having reviewed the record and the parties' stipulated motion, the Court
5 finds and ORDERS:

- 6 1. The parties' Stipulated Motion to Dismiss FMLA Claims and Remand to State Court
7 (Dkt. #7) is GRANTED.
- 8 2. Plaintiffs' FMLA claims are DISMISSED without prejudice.
- 9 3. There are no further federal claims remaining. The case is REMANDED back to the
10 Superior Court of Washington in and for King County pursuant to 28 U.S.C. § 1447(c).

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13 ² The parties believe remand will follow pursuant to 28 U.S.C. § 1447(c). That statute provides
14 that: "If at any time before final judgment it appears that the district court lacks subject matter
15 jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). Despite the strong language of
16 § 1447(c), dismissal of the federal question claim does not divest this Court of subject matter
17 jurisdiction. *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir. 1991) (district courts
have discretion "to retain jurisdiction to adjudicate the pendent state claims or to remand them to
state court"). *See also, Stayart v. Dillard's Properties, Inc.*, No. 2:14-CV-00495-MCE-AC, 2014
WL 2895408, at *2 (E.D. Cal. June 25, 2014):

18 "If at any time before final judgment it appears that the district court lacks subject
19 matter jurisdiction, the case shall be remanded" to state court. 28 U.S.C.
20 § 1447(c). However, where a plaintiff dismisses all claims giving rise to federal
21 question jurisdiction, leaving only claims over which the court exercises
22 supplemental jurisdiction, the court does not lack subject matter jurisdiction.
Rather, the court may choose to continue to exercise supplemental jurisdiction
over those claims, or may exercise its discretion to remand the case to state court.
23 *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 108 S.Ct. 614, 98 L.Ed.2d
720 (1988). Thus, "a plaintiff may not compel remand by amending a complaint
24 to eliminate the federal question upon which removal was based." *Sparta Surgical
Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998).
25 "It is well settled that a federal court does have the power to hear claims that
would not be independently removable even after the basis for removal
jurisdiction is dropped from the proceedings." *Harrell v. 20th Century Ins. Co.*,
934 F.2d 203, 205 (9th Cir. 1991) (internal quotations and citations omitted).

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4. This matter is now CLOSED

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Dated this 17 day of April, 2019.

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RICARDO S. MARTINEZ
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CHIEF UNITED STATES DISTRICT JUDGE
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